Supreme Court, U.S.
FILED

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(2)

No.

In The
Supreme Court of the United States

Beatrice Martone, Petitioner

v.

Phyllis G. and John Neiswanger, Respondents

United States Court of Appeals - Second Circuit
Foley Square, in the City of New York

SUPPLEMENTAL APPENDIX

Beatrice Martone, Pro Se
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Cheshire, CT 06410
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7 pp

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

BEATRICE MARTONE-ROSATO

v. 3:98CV1322 JCHDW

PHYLLIS GUARDIANO-NEIZWANGER
and JACK NEIZWANGER

JUDGMENT

This matter came on before the Honorable Janet C. Hall, United States District Judge, as a result of a complaint filed on July 10, 1998.

The Court has reviewed all of the papers filed in the case and on April 6, 2000, entered a Decision dismissing the plaintiff's claims for lack of subject matter jurisdiction.

Therefore, it is ORDERED and ADJUDGED that judgment is entered for the defendants and the complaint is dismissed.

Dated at Bridgeport, Connecticut, this 11th day of April, 2000.

KEVIN F. ROWE, Clerk

By _____
Deputy-in-Charge

Entered on Docket 4/11/00

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

BEATRICE MARTONE-ROSATO
Plaintiff,

v.

CIVIL ACTION NO.
3:98CV01322 (JCH) DW

PHYLLIS GUARDIANO-
NEIZWANGER, et al.,
Defendants

April 6, 2000

DECISION

This case originated with a dispute over a tenants' security deposit. The defendants, Jack and Phyllis Neiswanger, are the former tenants of a condominium apartment owned by the plaintiff, Beatrice Martone-Rosato, and her now former husband.

The plaintiff did not return the defendants' security deposit of $1,000 once they moved out, alleging they had conspired with her ex-husband to improperly rent the condo to the new tenants. The defendants sued the plaintiff in small claims court for return of the security deposit. The Neiswangers obtained a judgment against Martone-Rosato for twice the amount of the security deposit, because the security deposit had not been return within 30 days of the end of the lease, plus $30 in costs, for a total of $2,030. See Conn. Gen. Stat. §47a-21(d)(2). The judgment was to be paid by May 1, 1996. Ms. Martone-Rosato did not pay the judgment, so the Neiswangers applied for an execution against her bank account in June of 1996. Ms. Martone-Rosato filed a claim for exemption for the funds in the account on the ground that the account contained social security payments to her and therefore was exempt. The matter was set down for hearing before Judge Silbert in the

Superior (Small Claims) Court of the State of Connecticut. Ms. Martone-Rosato did not attend the hearing. On June 28, 1996, Judge Silbert denied the claim for exemption. See Plaintiff's Exh. 4.[1]

The sheriff executed the judgment against Ms. Martone-Rosato's bank account and the contents of the plaintiff's bank account were used to satisfy the judgment in part. This left $684 of the judgment unsatisfied, and the defendants filed on the land records a judgment lien against the plaintiff's condo for that amount. The condo at the time the lien was filed was the plaintiff's primary residence.

The plaintiff has now sued the defendants pro se in federal court alleging that they have improperly taken funds that were social security funds in violation of 42 U.S.C. § 407, and improperly filed a lien against her primary residence.[2]

First, with respect to the execution against Martone-Rosato's bank account, based upon the full records before this court, it is clear that the plaintiff is seeking to have this court review and overturn Judge Silbert's ruling that the funds in her bank account were not exempt as social security funds. However, the court does not have jurisdiction to do so under the principle of res judicata and the Rooker-Feldman doctrine.

The Rooker-Feldman doctrine was first announced by the United States Supreme Court in Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and was reaffirmed in District of Columbia Court of Appeals v. Feldman, 460

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[1] There is an exhibit that appears to be a certification of a copy of a "Denial of Execution." P Ex. 7. However, neither party produced any document that is a denial of the defendants' right to execute. Therefore, based on the record before this court, the court concludes that plaintiff's Exhibit 4 is a denial of plaintiff's claim for execution and that there is no court document that purports to deny the defendants the right to execute.

[2] The defendants are also pro se in this matter.

U.S. 462 (1983). The doctrine holds that, among federal courts, only the Supreme Court has subject matter jurisdiction to review state court judgments. See Johnson v. Smithsonian Institution, 189 F. 3d 180, 185 (2d Cir. 1999).[3] The doctrine also bars federal courts from reviewing claims that are "inextricably intertwined" with prior state court determinations. Id. (citing Feldman, 460 U.S. at 482 n. 16). As other federal courts have noted:

> [T]he fundamental and appropriate question to ask is whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment. If the injury alleged resulted from the state court judgment itself, Rooker-Feldman directs that the lower federal courts lack jurisdiction.

Johnson, 189 F.3d at 186 (quoting Garry v. Geils, 82 F.3d 1362, 1365 (7th Cir. 1996)).

In this case, the injury the plaintiff is claiming arose directly out of the state court judgment. The fundamental issue to be resolved in the state court hearing was whether the funds in the plaintiff's bank account were exempt social security funds. Similarly, the fundamental issue the plaintiff wishes to have this court decide is whether those same funds should have been considered exempt because they were social security funds. The state court already decided this issue. The state court's decision is inextricably intertwined with the plaintiff's claim in this federal court case, as the plaintiff is now arguing to this court that Judge Silbert's ruling was

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[3] Because the Rooker-Feldman doctrine concerns the subject matter jurisdiction of this court, it may be raised at any time by either party or sua sponte by the court. See Mocciov. New York State Office of Court Administration, 95 F.3d 195, 198 (2d Cir. 1996). In fact, the court has a duty to dismiss this case if it finds it lacks subject matter jurisdiction. This court therefore properly considers this issue despite the fact that none of the parties have raised it. See Louisville & Nashville R.R. v. Mottley, 211 U.S. 149 (1908).

erroneous. See Johnson, supra, 189 F.3d at 185. This court, under the mandate of the Rooker-Feldman doctrine, does not have the power to review the decision of a state court judge. Moreover, because the court does not have the power to review or overturn the state court judge's decision, the court also cannot further consider whether the execution on the plaintiff's bank account was proper. The plaintiff's claim with respect to her bank account is therefore dismissed for lack of jurisdiction.

With respect to the lien, Martone-Rosato's claim is not barred by the Rooker-Feldman doctrine, since the state court proceeding did not address the legality of a lien against Martone-Rosato's primary residence. The plaintiff raises a serious question that the lien is proper, given Connecticut law exempting an individual's primary residence from execution and the parties' agreement on the record that the condominium is, in fact, Martone-Rosato's primary residence. See Conn. Gen. Stat. §52-352b(t). However, this court cannot decide the merits of Martone-Rosato's lien claim because this court again lacks subject matter jurisdiction over the dispute.

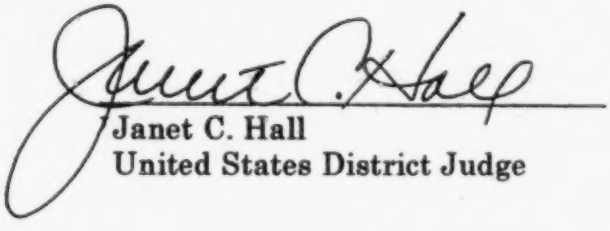
Federal courts are courts of limited jurisdiction. See McNutt v. General Motors Acceptance Corp., 298 U.S. 178 (1936). Thus, this court can only hear claims that are specifically authorized by Article III of the United States Constitution and by statute. See, e.g., 28 U.S.C. §§1331 (federal question jurisdiction), 1332 (diversity of citizenship). The plaintiff's claim with respect to the lien on her property does not arise under any federal law or the Constitution. Rather, the plaintiff's claim arises out of state law and should have been litigated in state court. Further, the plaintiff and the defendants all reside in Connecticut, so the court has no jurisdiction based on diversity of citizenship. Finally, since the claim arising under the federal Social Security Act has been dismissed, the court has no basis for hearing the lien-related claim under supplemental jurisdiction. See 29 U.S.C. §1367(c)(3) ("The district courts may decline to exercise

supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction . . . .")

Accordingly, this court lacks subject matter jurisdiction over both of the plaintiff's claims and the plaintiff's claims are therefore DISMISSED.

SO ORDERED.

Dated at Bridgeport, Connecticut this 6th day of April, 2000.



Janet C. Hall
United States District Judge

No._____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

Beatrice Martone - PETITIONER

vs.

Phyllis G. and John Neiswanger - RESPONDENTS

PROOF OF SERVICE

I, Beatrice Martone, Pro Se, do swear or declare that on this date, October 7, 2003, as required by Supreme Court Rule 29 I have served the enclosed SUPPLEMENTAL APPENDIX on each party to the above proceeding or that party's counsel, by depositing an envelope containing the above documents in the U.S. mail properly addressed to each of them and with first class postage prepaid. Rule 14.5.

The names and (*Corrected) *address of those served are as follows:

Phyllis G. & John Neiswanger +
*485 Higgins Road, Cheshire, CT 06410
& that party's counsel +
Michael Rizzo, Esquire
2862 Whitney Avenue, Hamden, CT 06518

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 7, 2003.

Beatrice Martone, Pro Se
(Signature)

Beatrice Martone, Pro Se
12 Quarry Village, Cheshire, CT 06410
(203) 271-1807